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8 UNITED STATES DISTRICT COURT – SOUTHERN DISTRICT OF
9 CALIFORNIA

10
11 CHAD MCKINNEY, an individual,
12 Plaintiff,

13 v.

14 APOLLO GROUP, INC.,
UNIVERSITY OF PHOENIX, a
Corporation, MECHELLE
15 BONILLA, an Enrollment Manager
at UNIVERSITY OF PHOENIX,
KYAN FLYNN, Director of
16 Enrollment at UNIVERSITY OF
PHOENIX, APRIL ALCORN, an
Employees Relations Consultant at
UNIVERSITY OF PHOENIX,
17 CARLYN LINDSTEN, Associate
Director of Enrollment at
UNIVERSITY OF PHOENIX

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19 Defendants
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CASE NO. 07-CV-2373 WQH CAB

DEFENDANT UNIVERSITY OF
PHOENIX, INC.’S OPPOSITION TO
PLAINTIFF’S MOTION TO STRIKE
THE DEFENDANTS’ NOTICE OF
NON-OPPOSITION TO MOTION
TO DISMISS PLAINTIFF’S
COMPLAINT, OR, IN THE
ALTERNATIVE, MOTION FOR
MORE DEFINITE STATEMENT
AND MOTION TO SET ASIDE
ENTRY OF DEFAULT;
DECLARATION OF ANH DUFOUR

[FRCP 12(b)(2); 12(b)(5); 12(b)(6);
12(e); 55(c).]

Date: May 12, 2008
Time: 11:00 a.m.
Courtroom: 4
Judge: Hon. William Q. Hayes

DATE OF FILING: December 19, 2007

1 Plaintiff Chad McKinney (“McKinney”) has filed a motion to strike Apollo
2 Group, Inc.’s (“Apollo”) notice of non-opposition to defendants’ motion to dismiss
3 plaintiff’s complaint, or in the alternative, motion for more definite statement
4 (“Motion to Dismiss”) under the sole contention that he did not receive “all of the
5 documentation necessary to successfully defend himself.” However, not only does
6 McKinney fail to state what documentation he allegedly did not receive but the
7 focus of his motion is an irrelevant diatribe about his alleged previous failure to
8 receive one page of a document and his belief that defendants’ counsel is engaging
9 in a deceptive strategy. In fact, Apollo properly sent the Motion to Dismiss in order
10 to effectuate service and McKinney in fact received the Motion to Dismiss. What
11 McKinney appears to have failed to realize is that Apollo served McKinney with its
12 Motion to Dismiss in the same package as its Opposition to Plaintiff’s Motion for
13 Clerk’s Entry of Default and its Motion to Set Aside Entry of Default, which
14 McKinney has already replied to and opposed respectively and which he has never
15 alleged he did not receive, thereby making it impossible that McKinney did not also
16 receive the Motion to Dismiss.

I.

APOLLO PROPERLY EFFECTUATED SERVICE

20 On March 7, 2008, Apollo filed and served its Motion to Dismiss by Federal
21 Express on McKinney at the address provided by McKinney and listed in the
22 caption, 6266 Madeline Street, Apartment #61, San Diego, California 92115.
23 [Declaration of Anh Dufour, ¶ 2, Ex. 1.] The document was picked up by Federal
24 Express at 600 Anton Boulevard, Costa Mesa, California 92626. [Id.] The Federal
25 Express package containing the Motion to Dismiss was delivered to McKinney's
26 address and left at his front door on March 10, 2008. [Declaration of Anh Dufour,
27 ¶ 3, Ex. 2.] Pursuant to Federal Rules of Civil Procedure, Rule 5(b)(2)(C), service
28 is established by mailing the document to the person's last known address, in which

1 The document was picked up by Federal Express at 600 Anton Boulevard, Costa
 2 Mesa, California 92626. [Declaration of Anh Dufour, ¶ 4, Ex. 3.] The Federal
 3 Express package containing the Motion to Dismiss was delivered to McKinney's
 4 address and left at his front door on April 2, 2008. [Declaration of Anh Dufour, ¶
 5, Ex. 4.] Both Motions were served in the same exact manner. [Declaration of
 6 Anh Dufour, ¶¶ 2, 4.] Pursuant to Federal Rules of Civil Procedure, Rule
 7 5(b)(2)(C), service is established by mailing the document to the person's last
 8 known address, in which event service is complete upon mailing. UOP served
 9 McKinney with its Motion to Dismiss by sending the Motion by express mail to
 10 McKinney's last known address and thus service was properly effectuated.

11 **II.**

12 **MCKINNEY ACTUALLY RECEIVED THE MOTIONS**

13 While it appears to be McKinney's "Affidavit that he never received [the
 14 Motions]," UOP served in the same Federal Express package as the Motion to Set
 15 Aside its Opposition to Plaintiff's Motion for Clerk's Entry of Default which
 16 McKinney clearly received as he filed his Reply to UOP's Opposition to Motion for
 17 Clerk's Entry of Default on May 7, 2008. [See Declaration of Anh Dufour, ¶ 4, Ex.
 18 3.] As such, despite his affidavit to the contrary, McKinney received the Motion to
 19 Set Aside on April 2, 2008 and in all likelihood received the Motion to Dismiss on
 20 April 1, 2008 as it was served in the same exact manner and to the same address as
 21 the Motion to Set Aside.

22 Date: May 15, 2008

23 SNELL & WILMER L.L.P.

24
 25 By: s/Nathan W. Hicks
 26 Christy Joseph
 27 Nathan W. Hicks
 28 Attorneys for Defendants

Declaration of Anh Dufour

I, Anh Dufour, declare:

1. I am over the age of 18 and the secretary to Nathan W. Hicks at the law firm of Snell & Wilmer L.L.P., attorneys of record in this matter for defendants (“Defendants”). Except where indicated, I state the following of my own knowledge and if called upon to do so could testify competently to the following.

2. On March 31, 2008, I sent by Federal Express University of Phoenix, Inc.'s ("UOP") Motion to Dismiss Plaintiff's Complaint, or in the Alternative, Motion for More Definite Statement to plaintiff Chad McKinney at his residence, 6266 Madeline St., Apartment #61, San Diego, California 92115. A true a correct copy of the proof of service for the Motion to Dismiss is attached hereto as Exhibit 1.

3. On May 13, 2008, I accessed the Federal Express tracking system online and checked the tracking number for the Motion to Dismiss. Pursuant to the Federal Express tracking, the Federal Express package containing UOP's Motion to Dismiss arrived at McKinney's address and was left at his door on April 1, 2008. A true and correct copy of the Federal Express Tracking Statement regarding the Motion to Dismiss is attached hereto as Exhibit 2.

4. On April 1, 2008, I sent by Federal Express UOP's Motion to Set Aside Entry of Default, and UOP's Opposition to Plaintiff's Motion for Clerk's Entry of Default to plaintiff Chad McKinney at his residence, 6266 Madeline St., Apartment #61, San Diego, California 92115. I sent both of these documents together in one package to plaintiff Chad McKinney. A true a correct copy of the proofs of service for the Motion to Set Aside Entry of Default and Opposition to Plaintiff's Motion for Clerk's Entry of Default are attached hereto as Exhibit 3.

3. On May 13, 2008, I accessed the Federal Express tracking system online and checked the tracking number for UOP's Motion to Set Aside Entry of Default, and Opposition to Plaintiff's Motion for Clerk's Entry of Default.

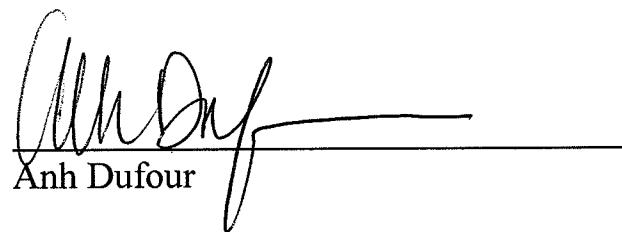
1 Pursuant to the Federal Express tracking, the Federal Express package containing
2 Apollo Group, Inc.'s UOP's Motion to Set Aside Entry of Default, and Opposition
3 to Plaintiff's Motion for Clerk's Entry of Default arrived at McKinney's address
4 and were left at his door on April 2, 2008. A true and correct copy of the Federal
5 Express Tracking Statement regarding UOP's Motion to Set Aside Entry of
6 Default, and Opposition to Plaintiff's Motion for Clerk's Entry of Default is
7 attached hereto as Exhibit 4.

8

9 I declare under penalty of perjury under the laws of the State of California
10 that the foregoing is true and correct.

11

Dated: May 15, 2008



Anh Dufour

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EXHIBIT 1

PROOF OF SERVICE

2 **McKinney v. Apollo Group, Inc., et al.**
 3 **USDC, Southern – Case No. 07-CV-2373**

4 I am employed in the County of Orange, State of California. I am over the age of
 5 18 and not a party to the within action; my business address is 600 Anton Boulevard,
 6 Suite 1400, Costa Mesa, California 92626-7689.

7 On March 31, 2008, I served, in the manner indicated below, the foregoing
 8 document described as

9 **UNIVERSITY OF PHOENIX, INC.'S MEMORANDUM OF POINTS AND
 10 AUTHORITIES IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S
 11 COMPLAINT, OR, IN THE ALTERNATIVE, MOTION FOR MORE
 12 DEFINITE STATEMENT**

13 on the interested parties in this action by placing true copies thereof, enclosed in sealed
 14 envelopes, at Costa Mesa, addressed as follows:

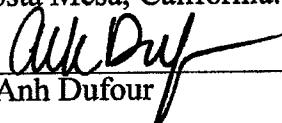
15 I am employed in the office of a member of the bar of this court at whose direction
 16 the service was made.

17 **Please See Attached Service List**

- 18 BY REGULAR MAIL: I caused such envelopes to be deposited in the
 19 United States mail at Costa Mesa, California, with postage thereon fully
 20 prepaid. I am readily familiar with the firm's practice of collection and
 21 processing correspondence for mailing. It is deposited with the United
 22 States Postal Service each day and that practice was followed in the
 23 ordinary course of business for the service herein attested to (C.C.P. §
 24 1013(a)).
- 25 BY FACSIMILE: (C.C.P. § 1013(e)(f)) and by e-mail
- 26 BY FEDERAL EXPRESS: I caused such envelopes to be delivered by air
 27 courier, with next day service, to the offices of the addressees. (C.C.P. §
 28 1013(c)(d)).
- 29 BY PERSONAL SERVICE: I caused such envelopes to be delivered by
 30 hand to the offices of the addressees. (C.C.P. § 1011(a)(b)).

31 I declare under penalty of perjury under the laws of the State of California that the
 32 above is true and correct.

33 Executed on March 31, 2008, at Costa Mesa, California.

34 
 35 Anh Dufour

36 8626180

37 PROOF OF SERVICE

Snell & Wilmer
 L.L.P.
 LAW OFFICES
 600 Anton Boulevard, Suite 1400
 Costa Mesa, California 92626-7689
 (714) 427-7800

SERVICE LIST

McKinney v. Apollo Group, Inc., et al.
USDC, Southern - Case No. 07-CV-2373

Chad McKinney Pro Se 6266 Madeline Street, Apt. #61 San Diego, CA 92115 (619) 634-3566	Plaintiff, Pro Se
United States District Court Attention: Hon. Judge William Q. Hayes Courtroom 4 880 Front Street, Room 4290 San Diego, CA 92101-8900 (619) 557-5600	Courtesy Copy

Snell & Wilmer

L.L.P.
LAW OFFICES
600 Anton Boulevard, Suite 1400
Costa Mesa, California 92626-7689
(714) 427-7000

EXHIBIT 2


[Close Window](#)

Track Shipments/FedEx Kinko's Orders Detailed Results

Print

Tracking number	792674932719	Reference	11127.9331
Signed for by	Signature release on file	Destination	San Diego, CA
Ship date	Mar 31, 2008	Delivered to	Residence
Delivery date	Apr 1, 2008 9:59 AM	Service type	Priority Pak
		Weight	5.0 lbs.

Status Delivered

Signature image available No

Date/Time	Activity	Location	Details
Apr 1, 2008	9:59 AM Delivered	San Diego, CA	Left at front door. Package delivered to recipient address - release authorized
	8:05 AM On FedEx vehicle for delivery	SAN DIEGO, CA	
	7:06 AM At local FedEx facility	SAN DIEGO, CA	
	4:49 AM At dest sort facility	SAN DIEGO, CA	
Mar 31, 2008	8:04 PM Left origin	IRVINE, CA	
	6:34 PM Package data transmitted to FedEx		
	5:41 PM Picked up	IRVINE, CA	

[E-mail results](#)
[Track more shipments/orders](#)

Subscribe to tracking updates (optional)

Your name:

Your e-mail address:

E-mail address

Language

Exception updates

Delivery updates

English



English



English



English



Select format: HTML Text Wireless

Add personal message:

Not available for Wireless or non-English characters.

By selecting this check box and the Submit button, I agree to these [Terms and Conditions](#)

EXHIBIT 3

PROOF OF SERVICE

2 **McKinney v. Apollo Group, Inc., et al.**
 3 USDC, Southern – Case No. 07-CV-2373

4 I am employed in the County of Orange, State of California. I am over the age of
 5 18 and not a party to the within action; my business address is 600 Anton Boulevard,
 6 Suite 1400, Costa Mesa, California 92626-7689.

7 On April 1, 2008, I served, in the manner indicated below, the foregoing document
 8 described as

9 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
 10 **MOTION TO SET ASIDE ENTRY OF DEFAULT AGAINST THE**
 11 **UNIVERSITY OF PHOENIX, INC.**

12 on the interested parties in this action by placing true copies thereof, enclosed in sealed
 13 envelopes, at Costa Mesa, addressed as follows:

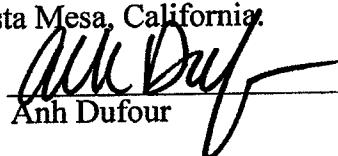
14 I am employed in the office of a member of the bar of this court at whose direction
 15 the service was made.

16 **Please See Attached Service List**

- 17 □ BY REGULAR MAIL: I caused such envelopes to be deposited in the
 18 United States mail at Costa Mesa, California, with postage thereon fully
 19 prepaid. I am readily familiar with the firm's practice of collection and
 20 processing correspondence for mailing. It is deposited with the United
 21 States Postal Service each day and that practice was followed in the
 22 ordinary course of business for the service herein attested to (C.C.P. §
 23 1013(a)).
- 24 □ BY FACSIMILE: (C.C.P. § 1013(e)(f)) and by e-mail
- 25 ☒ BY FEDERAL EXPRESS: I caused such envelopes to be delivered by air
 26 courier, with next day service, to the offices of the addressees. (C.C.P. §
 27 1013(c)(d)).
- 28 □ BY PERSONAL SERVICE: I caused such envelopes to be delivered by
 29 hand to the offices of the addressees. (C.C.P. § 1011(a)(b)).

30 I declare under penalty of perjury under the laws of the State of California that the
 31 above is true and correct.

32 Executed on April 1, 2008, at Costa Mesa, California.



Anh Dufour

SERVICE LIST

2 **McKinney v. Apollo Group, Inc., et al.**
 3 **USDC, Southern – Case No. 07-CV-2373**

4 Chad McKinney 5 Pro Se 6 6266 Madeline Street, Apt. #61 7 San Diego, CA 92115 8 (619) 634-3566	Plaintiff, Pro Se
9 United States District Court 10 Attention: Hon. Judge William Q. Hayes 11 Courtroom 4 12 940 Front Street, Room 4290 13 San Diego, CA 92101-8900 14 (619) 557-5600	Courtesy Copy

15 Snell & Wilmer
 16 LLP.
 17 LAW OFFICES
 18 600 Anton Boulevard, Suite 1400
 19 Costa Mesa, California 92626-7689
 20 (714) 427-7000

PROOF OF SERVICE

2 **McKinney v. Apollo Group, Inc., et al.**
 3 **USDC, Southern – Case No. 07-CV-2373**

4 I am employed in the County of Orange, State of California. I am over the age of
 5 18 and not a party to the within action; my business address is 600 Anton Boulevard,
 6 Suite 1400, Costa Mesa, California 92626-7689.

7 On April 1, 2008, I served, in the manner indicated below, the foregoing document
 8 described as

9 **DEFENDANT THEUNIVERSITY OF PHOENIX, INC.'S OPPOSITION TO**
 10 **PLAINTIFF'S MOTION FOR CLERK'S ENTRY OF DEFAULT**

11 on the interested parties in this action by placing true copies thereof, enclosed in sealed
 12 envelopes, at Costa Mesa, addressed as follows:

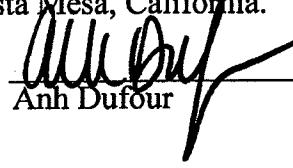
13 I am employed in the office of a member of the bar of this court at whose direction
 14 the service was made.

15 **Please See Attached Service List**

- 16 BY REGULAR MAIL: I caused such envelopes to be deposited in the
 17 United States mail at Costa Mesa, California, with postage thereon fully
 18 prepaid. I am readily familiar with the firm's practice of collection and
 19 processing correspondence for mailing. It is deposited with the United
 20 States Postal Service each day and that practice was followed in the
 21 ordinary course of business for the service herein attested to (C.C.P. §
 22 1013(a)).
- 23 BY FACSIMILE: (C.C.P. § 1013(e)(f)) and by e-mail
- 24 BY FEDERAL EXPRESS: I caused such envelopes to be delivered by air
 25 courier, with next day service, to the offices of the addressees. (C.C.P. §
 26 1013(c)(d)).
- 27 BY PERSONAL SERVICE: I caused such envelopes to be delivered by
 28 hand to the offices of the addressees. (C.C.P. § 1011(a)(b)).

I declare under penalty of perjury under the laws of the State of California that the
 above is true and correct.

Executed on April 1, 2008, at Costa Mesa, California.



Anh Dufour

SERVICE LIST

2 **McKinney v. Apollo Group, Inc., et al.**
 3 **USDC, Southern – Case No. 07-CV-2373**

4 Chad McKinney 5 Pro Se 6 6266 Madeline Street, Apt. #61 7 San Diego, CA 92115 8 (619) 634-3566	Plaintiff, Pro Se
9 United States District Court 10 Attention: Hon. Judge William Q. Hayes 11 Courtroom 4 12 940 Front Street, Room 4290 13 San Diego, CA 92101-8900 14 (619) 557-5600	Courtesy Copy

Snell & Wilmer
 L.L.P.
 LAW OFFICES
 600 Anton Boulevard, Suite 1400
 Costa Mesa, California 92626-7689
 (714) 427-7000

8626180

PROOF OF SERVICE

EXHIBIT 4


[Close Window](#)

Track Shipments/FedEx Kinko's Orders Detailed Results

[Print](#)

Tracking number	799829625120	Reference	11127-9331
Signed for by	Signature release on file	Destination	SAN DIEGO, CA
Ship date	Apr 1, 2008	Delivered to	Residence
Delivery date	Apr 2, 2008 9:43 AM	Service type	Priority Overnight
		Weight	1.0 lbs.

Status Delivered

Signature image available [No](#)

Date/Time	Activity	Location	Details
Apr 2, 2008	9:43 AM Delivered	SAN DIEGO, CA	Left at front door. Package delivered to recipient address - release authorized
	8:27 AM On FedEx vehicle for delivery	SAN DIEGO, CA	
	7:54 AM At local FedEx facility	SAN DIEGO, CA	
Apr 1, 2008	8:01 PM Left origin	IRVINE, CA	
	5:38 PM Picked up	IRVINE, CA	
	3:24 PM Package data transmitted to FedEx		

[E-mail results](#)
[Track more shipments/orders](#)

Subscribe to tracking updates (optional)

Your name:

Your e-mail address:

E-mail address	Language	Exception updates	Delivery updates
	English	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	English	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	English	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	English	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Select format: HTML Text Wireless

Add personal message:

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By selecting this check box and the Submit button, I agree to these [Terms and Conditions](#)

[Submit](#)

PROOF OF SERVICE

**McKinney v. Apollo Group, Inc., et al.
USDC, Southern – Case No. 07-CV-2373**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 600 Anton Boulevard, Suite 1400, Costa Mesa, California 92626-7689.

On May 15, 2008, I served, in the manner indicated below, the foregoing document described as **DEFENDANT UNIVERSITY OF PHOENIX, INC.'S OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE THE DEFENDANTS' NOTICE OF NON-OPPOSITION TO MOTION TO DISMISS PLAINTIFF'S COMPLAINT, OR, IN THE ALTERNATIVE, MOTION FOR MORE DEFINITE STATEMENT AND MOTION TO SET ASIDE ENTRY OF DEFAULT; DECLARATION OF ANH DUFOUR** on the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, at Costa Mesa, addressed as follows:

Chad McKinney 6266 Madeline Street, Apt. #61 San Diego, CA 92115	Plaintiff, Pro Se Tel: (619) 634-3566
United States District Court Attention: Hon. Judge William Q. Hayes Courtroom 4 940 Front Street, Room 4290 San Diego, CA 92101-8900	Courtesy Copy Tel: (619) 557-5600

I am employed in the office of a member of the bar of this court at whose direction the service was made.

BY FEDERAL EXPRESS: I caused such envelopes to be delivered by air courier, with next day service, to the offices of the addressees. (C.C.P. § 1013(c)(d)). TRACKING #7998 5466 7334

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 15, 2008, at Costa Mesa, California.


Anh Dufour